

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|--|---|----------------------|
| In the matter of |) | |
| |) | |
| Implementation of Section 621(a)(1) of the Cable |) | |
| Communications Policy Act of 1984 as amended |) | MB Docket No. 05-311 |
| by the Cable Television Consumer Protection and |) | |
| Competition Act of 1992 |) | |
| |) | |

COMMENTS OF
MIDPENINSULA COMMUNITY MEDIA CENTER
IN RESPONSE TO THE FURTHER NOTICE
OF PROPOSED RULEMAKING

Midpeninsula Community Media Center submits these comments in response to the Further Notice of Proposal Rulemaking, released March 5, 2007, in the above-captioned rulemaking ("Further Notice").

1. **The City of Palo Alto on Behalf of the Joint Powers** is the local franchising authority for the California cities of Palo Alto, East Palo Alto, Menlo Park, Atherton, and Stanford, and unincorporated parts of San Mateo and Santa Clara Counties. There is one franchised cable operators within the Joint Power's jurisdiction. This cable operator, along with the current expiration dates of their franchises is: **Comcast, July, 2010. In addition, AT&T was granted a new statewide franchise on May 30, 2007.**

2. **The Midpeninsula Community Media Center** supports and adopts the comments of the Alliance for Community Media, the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors, the National League of Cities, the National Association of Counties, and the U.S. Conference of Mayors, filed in response to the Further Notice.

3. We oppose the Further Notice’s tentative conclusion (at ¶ 140) that the findings made in the FCC’s March 5, 2007, Order in this proceeding should apply to incumbent cable operators, whether at the time of renewal of those operators’ current franchises, or thereafter. This proceeding is based on Section 621(a)(1) of the Communications Act, 47 U.S.C. § 541(a)(1), and the rulings adopted in the Order are specifically, and entirely, directed at “facilitat[ing] and expedit[ing] entry of new cable competitors into the market for the delivery of video programming, and accelerat[ing] broadband deployment” (Order at ¶ 1).

4. We disagree with the rulings in the Order, both on the grounds that the FCC lacks the legal authority to adopt them and on the grounds that those rulings are unnecessary to promote competition, violate the Cable Act’s goal of ensuring that a cable system is “responsive to the needs and interests of the local community,” 47 U.S.C. § 521(2), and are in conflict with several other provisions of the Cable Act. But even assuming, for the sake of argument, that the rulings in the Order are valid, they cannot, and should not, be applied to incumbent cable operators. By its terms, the “unreasonable refusal” provisions of Section 621(a)(1) apply to “additional competitive franchise[s],” not to incumbent cable operators.

Those operators are by definition already in the market, and their future franchise terms and conditions are governed by the franchise renewal provisions of Section 626 (47 U.S.C. § 546), and not Section 621(a)(1).

5. We strongly endorse the Further Notice’s tentative conclusion (at para. 142) that Section 632(d)(2) (47 U.S.C. § 552(d)(2)) bars the FCC from “preempt[ing] state or local customer service laws that exceed the Commission’s standards,” and from “preventing LFAs and cable operators from agreeing to more stringent [customer service] standards” than the FCC’s.

Respectfully submitted,

Annie Folger
Executive Director
Midpeninsula Community Media Center
900 San Antonio Road
Palo Alto, CA 94303
650 494-8686 ext 17
annie@communitymediacenter.net
www.communitymediacenter.net